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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,  
8 Plaintiff,  
9 v.  
10 DONELL TALLEY,  
11 Defendant.

Case No. 2:17-cr-00404-RFB-VCF

**ORDER**

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14 Defendant Donell Talley moves the Court to vacate, set aside, or correct his sentence (ECF  
15 No. 145) on the basis that aiding and abetting a Hobbs Act robbery does not qualify as a “crime of  
16 violence” under 18 U.S.C. § 924(c). For the reasons below, his motion is denied.

17 **I. FACTUAL AND PROCEEDURAL BACKGROUND**

18 On January 22, 2018, Mr. Talley pleaded guilty to aiding and abetting carjacking (Count  
19 1), aiding and abetting Hobbs Act robbery (Count 2), and aiding and abetting the brandishing of a  
20 firearm during and in relation to a crime of violence, namely Count 2 (Count 3). ECF Nos. 58, 65,  
21 68, 69. On January 17, 2019, the Court imposed concurrent sentences of 18 months for Counts 1  
22 and 2 and a consecutive sentence of 84 months for Count 3. ECF Nos. 136, 138. The Court also  
23 sentenced Mr. Talley to supervised release for three years on Counts 1 and 2 and five years on  
24 Count 3. ECF No. 138.

25 Following the Supreme Court’s decision in United States v. Davis, 139 S. Ct. 2319 (2019)  
26 (holding the § 924(c) residual clause is unconstitutionally vague), on June 23, 2020, Mr. Talley  
27 timely filed a 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence relying on Davis.  
28 ECF No. 145. The motion was fully briefed. ECF Nos. 155, 158. On September 16, 2020, the

1 United States filed a Motion for leave to file a sur-reply, which the Court granted on September  
 2 29, 2020. ECF Nos. 163, 165. Mr. Talley Responded to the sur-reply on September 30, 2020. ECF  
 3 No. 167. On April 27, 2021, the United States filed a Motion for Leave to Advise the Court of new  
 4 authorities. ECF No. 172. On May 5, 2021, the Court granted the United States Motion for Leave  
 5 to Advise and set a hearing for the Motion to Vacate. ECF No. 175. Mr. Talley Responded to the  
 6 United States' Motion for Leave to Advise on May 11, 2021. ECF No. 182. On May 19, 2021, the  
 7 Court deferred ruling on the Motion to Vacate. ECF No. 187. Subsequently, both Mr. Talley and  
 8 the United States have kept the Court apprised of developments in the caselaw post-Davis. ECF  
 9 Nos. 191, 213, 217, 220, 221, 223, 226.

## 10 **II. LEGAL STANDARD**

11 Under 28 U.S.C. § 2255, a petitioner may file a motion requesting the court which imposed  
 12 sentence to vacate, set aside, or correct the sentence. 28 U.S.C. § 2255(a). Such a motion may be  
 13 brought on the following grounds: “(1) the sentence was imposed in violation of the Constitution  
 14 or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the  
 15 sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject  
 16 to collateral attack.” Id.; see United States v. Berry, 624 F.3d 1031, 1038 (9th Cir. 2010). When a  
 17 petitioner seeks relief pursuant to a right newly recognized by a decision of the United States  
 18 Supreme Court, a one-year statute of limitations applies. 28 U.S.C. § 2255(f)(3). That one-year  
 19 limitation begins to run from “the date on which the right asserted was initially recognized by the  
 20 Supreme Court.” Id.

## 21 **III. DISCUSSION**

22 The Court finds that there are no grounds to grant § 2255 relief.

23 Section 924(c), under which Mr. Talley was convicted, prohibits the use of a firearm  
 24 “during and in relations to any crime of violence.” 18 U.S.C. § 924(c)(1)(A). Following the  
 25 Supreme Court’s ruling in Davis, a felony qualifies as a crime of violence only if it “has as an  
 26 element the use, attempted use, or threatened use of physical force against the person or property  
 27 of another.” 18 U.S.C. § 924(c)(3)(A); see also Davis, 139 S. Ct. 2319 (invalidating  
 28

1 18 U.S.C. § 924(c)(3)(B)).

2 The Hobbs Act, under which Mr. Talley was convicted and which also supports his  
3 conviction under Count 3, criminalizes committing, attempting to commit, or conspiring to commit  
4 a robbery with an interstate component. 18 U.S.C. § 1951(a). Mr. Talley was convicted under an  
5 aiding and abetting theory of criminal liability. Section 924(c) authorizes heightened sentences for  
6 those who use a firearm in connection with a “crime of violence.” 18 U.S.C. § 924(c). Mr. Talley  
7 argues that, while Hobbs Act robbery is a crime of violence, he was convicted of aiding and  
8 abetting, which should not be considered a crime of violence.

9 The door to this argument opened with the Supreme Court’s decision in United States v.  
10 Davis, which presented the possibility that all or some forms of Hobbs Act robbery were not crimes  
11 of violence under § 924(c). 139 S. Ct. 2319. Following Davis, only federal felonies that have as  
12 an element the use, attempted use, or threatened use of force qualify for § 924(c).<sup>1</sup>  
13 18 U.S.C. § 924(c)(3)(A). In United States v. Taylor, the Supreme Court held that no element of  
14 attempted Hobbs Act robbery required proof of the defendant’s use, attempted use, or threat to use  
15 force. 142 S. Ct. 2015, 2020 (2022). Therefore, attempted Hobbs Act robbery was not a crime of  
16 violence and § 924(c) does not apply. Id. at 2021.

17 However, the Supreme Court and the Ninth Circuit recently closed that door to § 2255  
18 relief for those convicted of aiding and abetting Hobbs Act robbery. Following Taylor, the Ninth  
19 Circuit has held that while attempted Hobbs Act robbery is not a crime of violence, completed  
20 Hobbs Act robbery remains a crime of violence. United States v. Eckford, 77 F.4th 1228 (9th Cir.  
21 2023). Further, in Eckford, the Ninth Circuit also held that aiding and abetting a Hobbs Act  
22 robbery is a crime of violence. 77 F.4th at 1237. “One who aids and abets the commission of a  
23 violent offense has been convicted of the same elements as one who was convicted as a principal  
24 . . . .” Id. Therefore, aiding and abetting Hobbs Act robbery, like completed Hobbs Act robbery, is  
25 a crime of violence within the meaning of § 924(c). Id.; see also Young v. United States, 22 F.4th

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26  
27 <sup>1</sup> Prior to Davis, it was settled law in this circuit that Hobbs Act robbery was a crime of  
28 violence under a different provision of § 924(c). See United States v. Mendez, 992 F.2d 1488,  
1491 (9th Cir. 1993) (holding that Hobbs Act robbery was a crime of violence under the residual  
clause); Davis, 139 S. Ct. at 2336 (invalidating the residual clause).

1 1115, 1122-23 (9th Cir. 2022) (“We therefore hold that, because armed bank robbery is  
2 categorically a crime of violence, a person who aids or abets armed bank robbery falls, like a  
3 principal, within the scope of the definition of the underlying offense and is deemed to have  
4 committed a crime of violence under § 924(c)'s elements clause.”).

5 Since aiding and abetting Hobbs Act robbery is a crime of violence, Mr. Talley's  
6 conviction under § 924(c) is sound.

#### 7 **IV. CERTIFICATE OF APPEALABILITY**

8 This is a final order adverse to the Petitioner Mr. Talley. As such, Rule 11(a) of the Rules  
9 Governing Section 2255 Cases requires this Court to issue or deny a certificate of appealability  
10 (COA). See also 28 U.S.C. § 2253(c)(1)(B). Without a COA, Mr. Talley “may not appeal that  
11 denial.” United States v. Washington, 653 F.3d 1057, 1059 (9th Cir. 2011). To issue a COA, the  
12 Court must find that Mr. Talley “has made a substantial showing of the denial of a constitutional  
13 right.” 28 U.S.C. § 2253(c)(2). Under this standard, the Court looks for a showing that “reasonable  
14 jurists would find [this Court's] assessment of the constitutional claims debatable or wrong.” Slack  
15 v. McDaniel, 529 U.S. 473, 484 (2000). Because the Court found that settled, binding caselaw  
16 disposes of Mr. Talley's claims, the Court finds that no reasonable jurist could find the Court's  
17 assessment debatable or wrong.

#### 18 **V. CONCLUSION**

19 **IT IS THEREFORE ORDERED** that Defendant Donell Talley's Motion to Vacate, Set  
20 Aside, or Correct Sentence under 28 U.S.C. 2255 (ECF No. 145) is **DENIED**.

21 **IT IS FURTHER ORDERED** that Defendant Donell Talley is **DENIED** a Certificate of  
22 Appealability.  
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**IT IS FURTHER ORDERED** that the United States' Motion to Advise the Court (ECF No. 221) is **GRANTED**.

**DATED** this 4ths day of December 2023.

A stylized, handwritten signature in black ink, consisting of a large, looped 'B' with a vertical line through it and a horizontal line extending to the right.

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**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**